

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and
STATE OF OKLAHOMA, ex rel,
OKLAHOMA DEPARTMENT OF
ENVIRONMENTAL QUALITY, OKLAHOMA
DEPARTMENT OF WILDLIFE
CONSERVATION AND THE OKLAHOMA
SECRETARY OF THE ENVIRONMENT

Plaintiffs,

vs.

CITY OF OKMULGEE , OKLAHOMA
and
OKMULGEE PUBLIC WORKS
AUTHORITY

Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") and the United States Department of the Interior ("DOI"), and the State of Oklahoma, *ex relatione* through the Oklahoma Department of Environmental Quality ("ODEQ"), the Oklahoma Department of Wildlife Conservation ("ODWC"), and Miles Tolbert, Oklahoma Secretary of the Environment as Natural Resource Trustee, file this Complaint and allege as follows:

1. This is a civil action for injunctive relief and civil penalties pursuant to Sections 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319, and Title 27A O.S. §§ 1-2-101, 1-3-101, 2-6-105, 2-6-201 et seq. against Defendant City of Okmulgee, Oklahoma and the Okmulgee Public Works Authority (collectively “Defendants”) for the discharge of pollutants from the City of Okmulgee’s public treatment works and sanitary sewer system in violation of the CWA, the applicable National Pollutant Discharge Elimination System (“NPDES”) permit and Oklahoma Pollutant Discharge Elimination System (“OPDES”) permit issued to the City of Okmulgee pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for violations of State law at Sections 1-3-101(H), 2-6-105 and 2-6-201 et seq. of Title 27A of the Oklahoma Statutes, and for violations of the operation and maintenance requirements of the NPDES/OPDES permits. This is also a civil action to recover for damages to natural resources pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and Section 1-2-101 of Title 27A of the Oklahoma Statutes, for injury to habitat and fish in the Deep Fork River in the Deep Fork National Wildlife Refuge, to the resources under the jurisdiction of the DOI and the Oklahoma Secretary of the Environment in the Deep Fork River, to the Deep Fork National Wildlife Refuge, and to Okmulgee Creek and the Deep Fork of the Canadian River, resulting from Defendants’ unpermitted discharge(s) in August - September 2000 of effluent into the Deep Fork River.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 311(f) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(f), and state claims arising under 27A O.S. Sections 2-6-105 and 2-6-205 pursuant to 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over Defendants and venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because this is the district where Defendants are located and in which the alleged violations occurred.

4. The United States has authority to bring this action on behalf of the Administrator of EPA (“Administrator”) under Section 506 of the CWA, 33 U.S.C. § 1366 and 28 U.S.C. §§ 516 and 519.

5. The State of Oklahoma, *ex relatione*, through the ODEQ has authority to bring this action under Sections 1-3-101 (B) and 2-6-201 *et seq.* of Title 27A of the Oklahoma Statutes. The State of Oklahoma, *ex relatione*, through the ODWC has authority to bring this action under Section 1-3-101(H) of Title 27A of the Oklahoma Statutes. The State of Oklahoma, *ex relatione*, through the Oklahoma Secretary of the Environment is designated as the trustee for natural resources for those claims arising under the federal Water Pollution Control Act pursuant to Section 1-2-101 of Title 27A of the Oklahoma Statutes.

THE PARTIES

6. Plaintiffs are the United States of America, on behalf of the United States Environmental Protection Agency and the United States Department of the Interior, and the State of Oklahoma, *ex relatione*, through the ODEQ, the ODWC, and Miles Tolbert, Oklahoma Secretary of the Environment as Natural Resource Trustee.

7. Defendant City of Okmulgee is a political subdivision within Okmulgee County, Oklahoma, created pursuant to Oklahoma law that has jurisdiction over sewage disposal and therefore is a “municipality” as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

8. As a municipality, the City of Okmulgee is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

9. Defendant City of Okmulgee owns, operates, and controls a “publicly owned treatment works” as that term is defined at 40 C.F.R. § 122.2.

10. Defendant Okmulgee Public Works Authority is a public trust created and existing under the laws of Oklahoma for the benefit of the City of Okmulgee, Oklahoma by a declaration of trust dated April 24, 1967. The Okmulgee Public Works Authority leases from the City of Okmulgee and operates the publicly owned treatment works and sanitary sewer collection system pursuant to a lease dated September 22, 1969.

11. Defendant Okmulgee Public Works Authority is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

12. Defendant Okmulgee Public Works Authority operates and controls a “publicly owned treatment works” (hereinafter “the Okmulgee Facility”) as that term is defined at 40 C.F.R. § 122.2.

STATUTORY AND REGULATORY PROVISIONS

13. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant except as authorized by, and in compliance with, certain enumerated sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

14. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source”

15. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” to include sewage, sewage sludge, biological materials, and municipal waste discharged into water.

16. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” as any discernible, confined and discrete conveyance, including, but not limited to, any ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants may be discharged.

17. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including its territorial seas.

18. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may issue a permit, termed a National Pollutant Discharge Elimination System (“NPDES”) permit, that authorizes the discharge of pollutants, upon the condition that such discharge will meet the requirements of the CWA or other requirements that the Administrator may find are necessary.

19. Pursuant to Section 301 of the CWA, 33 U.S.C. § 1311, and Section 402 of the Act, 33 U.S.C. § 1342, the Administrator is authorized to specify effluent limitations in NPDES permits. Effluent limitations include -- but are not limited to -- restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges, as defined in Section 502(11) of the Act, 33 U.S.C. § 1362(11).

20. Pursuant to 40 C.F.R. § 122.41(e), promulgated under the Act, a standard condition in all NPDES permits states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

21. Pursuant to 40 C.F.R. § 403.3, promulgated under the Act, the term “publicly owned treatment works” (“POTW”) is defined as a treatment works, (as that term is defined under Section 212 of the Act, 33 U.S.C. § 1292), that treats municipal sewage and is owned by a State or municipality. This definition includes the sewers, pipes and other conveyances which

convey sewage to the sewage plant.

22. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, and 40 C.F.R. § 122.41, the Administrator may require the holder of a NPDES permit to monitor and report the pollutant levels in its discharged wastewater. Such reports are referred to as Discharge Monitoring Reports ("DMRs") and are required to be submitted to the EPA according to the time intervals specified in the NPDES.

23. Pursuant to 40 C.F.R. § 122.41 promulgated under the CWA, a standard condition of all NPDES permits requires that the permit holder report to the EPA any non-compliance that may endanger health or the environment.

24. Pursuant to 40 C.F.R. § 122.41 (k)(1) and 40 C.F.R. § 122.22 (3)(a) and (b), promulgated under the CWA, a standard condition of all NPDES permits requires that all DMRs and non-compliance reports submitted to the Administrator be signed by a responsible executor or authorized agent of the organization that controls the point source -- who certifies that the reports are accurate.

25. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for injunctive relief and civil penalties whenever any person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), such person is subject to a civil penalty not to exceed \$25,000 per day for each such violation that occurred prior to January 31, 1997, not to exceed \$27,500 for each day of such violation occurring after January 30, 1997 through

March 15, 2004, and not to exceed \$32,500 for each day of such violation occurring after March 15, 2004.

26. Section 311(b) (3) of the CWA, 33 U.S.C. § 1321(b)(3), provides that there shall be no discharges of oil or hazardous substances which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, in such quantities as may be harmful.

27. Section 311(f) of the CWA, 33 U.S.C. § 1321, authorizes the recovery of the costs of removal of oil or a hazardous substance, including the costs or expenses incurred by the Federal Government in the restoration or replacement of natural resources damaged or destroyed, from any person who owns or operates a facility from which oil or a hazardous substance is unlawfully discharged in violation of Section 311(b).

28. Title 27A O.S. Section 2-6-205 (A) provides:

“A. Except as otherwise provided in subsection B of this section, it shall be unlawful for any facility, activity or entity regulated by the Department pursuant to the Oklahoma Pollutant Discharge Elimination System Act to discharge any pollutant into waters of the state or elsewhere without first obtaining a permit from the Executive Director.”

29. Title 27A O.S. Section 2-6-105 provides:

“A. It shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance.”

30. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies

or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds or lagoons designed to meet federal and state requirements other than cooling ponds as defined in the Clean Water Act or rules promulgated thereto and prior converted crop land are not waters of the state. Title 27A of the Oklahoma Statutes, Section 1-1-201 (20).

31. Title 27A of the Oklahoma Statutes, Section 2-6-204 (B)(8) gives the Executive Director of the ODEQ all necessary or incidental authority to investigate and abate violations of permits issued by the Executive Director and violations of the Oklahoma Pollutant Discharge Elimination Systems Act (Title 27A of the Oklahoma Statutes, Section 2-6-201 et seq).

32. Title 27A of the Oklahoma Statutes, Section 2-6-206 (F) (1) authorizes the Executive Director of the ODEQ to commence a civil action for appropriate relief, including an action for a permanent or temporary injunction for violations of the Oklahoma Pollutant Discharge Elimination Systems Act (Title 27A of the Oklahoma Statutes, Section 2-6-201 et seq). Pursuant to 27A of the of the Oklahoma Statutes, Section 2-6-206 (F) (2) the Executive Director may, within said civil action, seek a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day for each violation.

33. Title 27A of the Oklahoma Statutes, Section 1-3-101(H) authorizes the ODWC to protect wildlife and seek damages for any injury to wildlife.

34. Title 27A of the Oklahoma Statutes, Section 1-2-101 authorizes the Secretary of

the Environment to act on behalf of the public as trustee for natural resources and is authorized to make claims consistent with the federal enabling acts.

GENERAL ALLEGATIONS

35. Defendant City of Okmulgee owns, operates, and controls the Okmulgee Facility and the sanitary sewer collection system for the City of Okmulgee.

36. The Okmulgee Public Works Authority leases and operates the Okmulgee Facility and the sanitary sewer collection system for the City of Okmulgee.

37. The Okmulgee Facility treats and discharges domestic and commercial sewage to the receiving waters of the Okmulgee Creek, a tributary to Deep Fork of the Canadian River, which is a navigable water of the United States as defined under Section 502(7) of the Act, 33 U.S.C. § 1362(7). Both Okmulgee Creek and the Deep Fork of the Canadian River are “Waters of the State” of Oklahoma as defined under Section 1-1-201 of Title 27A of the Oklahoma Statutes.

38. The Okmulgee Facility is a “point source” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and in Sections 1-1-201 and 2-6-202 of Title 27A of the Oklahoma Statutes.

39. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA issued to the City of Okmulgee NPDES Permit No. OK0028134 (hereinafter “the NPDES Permit”) which became effective on August 17, 1993.

40. The NPDES Permit authorizes the discharge from the Okmulgee Facility of specified qualities and quantities of effluent to receiving waters of the Okmulgee Creek.

41. Part A.1 of the NPDES Permit places limitations on the quality and quantity of

effluent discharged by the Okmulgee Facility. The NPDES Permit sets numerical limitations governing daily maximum, and 30- and 7- day average concentrations of the effluent characteristics for Total Suspended Solids ("TSS"), Coliform, Biochemical Oxygen Demand ("BOD"), and Ammonia-Nitrogen ("NH₃-N"), that may be discharged from the facility.

42. Part C of the NPDES Permit requires Defendants to monitor its discharges of pollutants from the facility in order to determine compliance with the effluent limitations established in the Permit, and to submit to EPA monthly Discharge Monitoring Reports ("DMRs") containing the results of the effluent monitoring.

43. Part D.11 of the NPDES Permit places certain operational and maintenance requirements on the Okmulgee Facility. The relevant requirements provide that:

The Permittee shall provide proper operation and maintenance which includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit. Collected screenings, slurries, sludges and other solids shall be disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into navigable waters or tributaries.

44. On June 6, 1996, EPA delegated to the ODEQ the NPDES permitting program for the State of Oklahoma.

45. The ODEQ issued OPDES Permit No. OK0028134 to the City with an effective date of November 1, 2001. Thereupon, the OPDES Permit superseded the NPDES Permit issued on July 16, 1993. The ODEQ has modified that permit twice with effective dates of August 30, 2002 and June 26, 2003.

46. The OPDES Permit and modifications contain effluent limits for, *inter alia*,

ammonia-nitrogen, BOD, coliform, and TSS, as well as monitoring requirements and operation and maintenance requirements for the Okmulgee Facility.

DEFENDANTS' VIOLATIONS

47. Certified DMRs submitted by the City of Okmulgee to EPA show that, during the period from April 1996 through at least December 2002, the Okmulgee Facility frequently discharged into navigable waters of the United States and Waters of the State pollutants that exceeded permitted effluent limits for, *inter alia*, ammonia-nitrogen, BOD, coliform, and TSS, in violation of the NPDES and OPDES permits and the CWA.

48. In or about August-September 2000, pollutants, including the hazardous substance ammonia-nitrogen, in excess of permitted effluent limits were discharged from the Okmulgee Facility and caused a fish kill in Okmulgee Creek and the Deep Fork of the Canadian River, a navigable water of the United States and Waters of the State, which is within the Deep Fork National Wildlife Refuge.

49. EPA and ODEQ have inspected the Okmulgee Facility on numerous occasions between 1996 and 2003 and observed violations of NPDES and OPDES permit conditions, including the operation and maintenance conditions of the permits.

50. Since January 1996, EPA has issued six (6) separate administrative orders to the City of Okmulgee for effluent violations and operation and maintenance violations: VI-96-1004, issued January 12, 1996 for operation and maintenance and sludge violations observed during a June 28, 1995 inspection; VI-97-0012, issued February 11, 1997 for effluent violations and operation and maintenance violations; VI-97-1325, issued July 21, 1997, for effluent violations; VI-99-1014, issued March 3, 1999 for effluent violations; administrative penalty order CWA-6-

1601-00, issued November 22, 1999 for effluent violations, operation and maintenance violations, and bypass violations (since withdrawn); and CWA-06-2002-1201, issued November 23, 2002, which requires that the City of Okmulgee take appropriate measures to comply with the CWA and its OPDES Permit and eliminate unpermitted discharges from its POTW.

51. Defendants maintain sewage collection systems that convey sewage through a network of underground pipes to the Okmulgee Facility for treatment.

52. On numerous occasions Defendants submitted to the EPA and the ODEQ non-compliance reports documenting sanitary sewer overflows (“SSOs”) from the collection system for the Okmulgee Facility. All non-compliance reports submitted to the EPA and the ODEQ by the City of Okmulgee for the sewer collection systems were signed by a responsible and authorized agent for the City of Okmulgee.

53. As a result of the above referenced SSOs, raw sewage discharged from the sewage collection system reached navigable waters of the United States and Waters of the State.

54. The DEQ (Division of Water Quality) and the City executed Consent Order, Case No. 01-038, on June 20, 2001, and executed Addendum, Case No. 01-038(A,) on February 2, 2002, which require the City to take appropriate measures to comply with 27A O.S. § 2-6-205 (A) and eliminate unlawful discharges of pollutants (Sanitary Sewer Overflows) from its collection system.

FIRST CLAIM FOR RELIEF

55. Paragraphs 1 through 54 are realleged and incorporated herein by reference.

56. From at least April 1996 to December 2002, Defendants discharged pollutants from the Okmulgee Facility in excess of the effluent limitations authorized by its NPDES and

OPDES permits.

57. Each day of Defendants' discharge of each pollutant in excess or in violation of the effluent limits authorized in the permits constitutes a separate violation of the applicable NPDES or OPDES permit, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 2-6-201 et seq. of Title 27A O.S.

58. Under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Defendants are liable for a civil penalty for each violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the permits, in an amount not to exceed \$27,500 for each day of each such violation occurring through March 15, 2004, and not to exceed \$32,500 for each day of each such violation occurring after March 15, 2004.

59. Defendants are liable pursuant to 27A O.S. § 2-6-206 for civil penalties of up to ten thousand dollars (\$10,000.00) per day, per violation for violations of 27A O.S. § 2-6-205 and liable pursuant to 27A O.S. § 2-3-504 for violations of 27A O.S. § 2-6-105.

SECOND CLAIM FOR RELIEF

60. Paragraphs 1 through 54 are realleged and incorporated herein by reference.

61. The NPDES and OPDES permits authorized discharges only from the Okmulgee Facility. Any discharge from points other than the Okmulgee Facility's designated outfall constitutes an unpermitted discharge.

62. On numerous occasions from April 1996 through December 2002, untreated sewage from unauthorized point sources within the Okmulgee collection system, such as manholes and cleanouts, discharged into navigable waters of the United States and Waters of the State.

63. Each SSO discharge by Defendants constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 2-6-201 et seq. of Title 27A O.S., for each day of each unauthorized discharge.

64. These discharges will continue unless the construction, operation and maintenance of the collection system is improved to correct deficiencies in the collection system.

65. Defendants are liable under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for a civil penalty for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the permits, in an amount not to exceed \$27,500 for each day of each such violation occurring through March 15, 2004, and not to exceed \$32,500 for each day of each such violation occurring after March 15, 2004.

66. Defendants are liable pursuant to 27A O.S. § 2-6-206 for civil penalties of up to ten thousand dollars (\$10,000.00) per day, per violation for violations of 27A O.S. § 2-6-201 et seq. and liable pursuant to 27A O.S. § 2-3-504 for violations of 27A O.S. § 2-6-105.

THIRD CLAIM FOR RELIEF

67. Paragraphs 1 through 54 are realleged and incorporated herein by reference.

68. Any SSOs which did not reach navigable waters of the United States or Waters of the State were caused by Defendants' failures to properly operate and maintain the sewage collection system for the facility as required by the NPDES and OPDES permits. Consequently, such SSOs from the Okmulgee Facility's collection system constitute violations of the applicable NPDES and OPDES permits.

69. SSOs from the collection system will continue to occur unless this Court orders Defendants to properly operate and maintain the sewage collection systems as required by the

current OPDES Permit.

70. Each failure to properly operate and maintain the Okmulgee Facility constitutes a violation of the applicable NPDES and OPDES permits, a violation of Section 301(a) of the CWA, and a violation of 2-6-201 et seq. of Title 27A O.S..

71. Defendants' violations of the operation and maintenance requirements of the current OPDES Permit may continue to occur until Defendants improve the operation and maintenance of the Okmulgee Facility in accordance with the OPDES Permit.

72. Defendants are liable under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for a civil penalty for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the permits, in an amount not to exceed \$27,500 for each day of each such violation occurring through March 15, 2004, and not to exceed \$32,500 for each day of each such violation occurring after March 15, 2004.

73. Defendants are liable pursuant to 27A O.S. § 2-6-206 for civil penalties of up to ten thousand dollars (\$10,000.00) per day, per violation for violations of 27A O.S. § 2-6-201 et seq. and liable pursuant to 27A O.S. § 2-3-504 for violations of 27A O.S. § 2-6-105.

FOURTH CLAIM FOR RELIEF

74. Paragraphs 1 through 54 are realleged and incorporated herein by reference.

75. The Deep Fork National Wildlife Refuge is a designated National Wildlife Refuge pursuant to 16 U.S.C. § 668dd, and the United States Fish and Wildlife Service of the United States Department of Interior administers the Refuge, including the natural resources therein, on behalf of the public.

76. Defendants' discharge(s) of effluent into the Deep Fork River in August -

September 2000 in violation of its NPDES Permit resulted in natural resource damages as defined in 311(f) of the CWA, 33 U.S.C. § 1321(f), including injury to habitat and fish in the Deep Fork of the Canadian River (“Deep Fork River”) in the Deep Fork National Wildlife Refuge, to the resources under the jurisdiction of the Department of the Interior in the Deep Fork River, and to the Deep Fork National Wildlife Refuge.

77. Defendants’ discharge(s) of effluent into Okmulgee Creek and the Deep Fork River, which are “Waters of the State” of Oklahoma, in August-September 2000 in violation of its NPDES Permit resulted in natural resource damages to the State of Oklahoma and injuries to wildlife. The Oklahoma Secretary of the Environment has jurisdiction over Natural Resource Damages in the State of Oklahoma, as trustee, pursuant to the federal CERCLA, 42 U.S.C. § 9601 et seq., the CWA, and 27A O.S. § 1-2-101 (A)(4). The ODWC has the authority to protect and seek damages for injury to wildlife pursuant to 27A O.S. 1-3-101(H).

78. The United States Department of the Interior acts on behalf of the public as the federal trustee of the natural resources damaged by Defendants’ unpermitted discharges. 33 U.S.C. § 1321(f).

79. Pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f), Defendants are responsible for the costs incurred by the United States in the restoration or replacement of natural resources damaged or destroyed due to Defendants’ unpermitted discharges.

80. Pursuant to 27A O.S. §§ 1-2-101 and 1-3-101(H), Defendants are responsible to the State of Oklahoma, *ex relatione*, through the Oklahoma Secretary of the Environment and the ODWC for natural resource damages to the State of Oklahoma and injuries to wildlife, respectfully.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court:

1. Pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 27A O.S. §§ 2-3 504 and 2-6-206, enjoin Defendants from any further violations of the OPDES Permit and CWA at their facility.

2. Order Defendants to improve the sewage collection system to eliminate violations of the CWA, the OPDES Act (27A O.S. § 2-6-201 et seq.), and the OPDES Permit.

3. Pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 27A O.S. §§ 2-3-504 and 2-6-206, assess civil penalties against Defendants, as permitted by law.

4. Pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f), and 27A O.S. § 1-2-101, order Defendants to pay natural resource damages to the United States and the State of Oklahoma, *ex relatione*, through the Oklahoma Secretary of the Environment, including the costs incurred by the United States and the State of Oklahoma in the restoration or replacement of natural resources damaged or destroyed due to Defendants' unpermitted discharges.

5. Pursuant to Section 1-3-101(H) of Title 27A of O.S., order Defendants to pay the State of Oklahoma, *ex relatione*, through the ODWC all damages sustained to wildlife and

resources under the jurisdiction of the ODWC resulting from Defendants' unpermitted discharges.

6. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

Date: 12/08/05

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FOR THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION, AND
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